

## REMARKS

This Amendment is submitted in response to the non-final Office Action mailed on December 23, 2008. A petition for a one-month extension of time is submitted herewith. The Director is authorized to charge the amount of \$130.00 for the cost of the one-month extension of time, and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-717 on the account statement.

Claims 1-18 are pending in this application. In the Office Action, Claims 2 and 7 are rejected under 35 U.S.C. §112. Claims 1-2, 4-5, 7 and 13-14 are rejected under 35 U.S.C. §102. Claims 3, 6, 8-12 and 15-18 are rejected under 35 U.S.C. §103. In response, Claims 1-4, 6-12 and 15-18 have been amended and Claims 19-24 have been newly added. At least in view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

Applicants note that Claims 3-4, 6, 8-12 and 15-18 have been amended solely for clarification purposes. These amendments do not add new matter. The amendments are supported in the Specification at, for example, page 2, paragraph 24; page 3, paragraph 26, lines 9-13.

In the Office Action, Claims 2 and 7 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. With respect to Claim 2, the Patent Office asserts that it is unclear whether the "source of fat" in Claim 2 refers to the fat present as discrete particles or to any fat present in the mixture. See, Office Action, page 2, lines 8-11. In response, Applicants have amended Claim 2 to replace the term "source of fat" with "source of fat in the form of discrete particles." This amendment does not add new matter. The amendment is supported in the Specification at, for example, page 2, paragraph 23, lines 7-11 and 17-22; page 3, paragraph 33. As such, Applicants respectfully submit that it is clear that Claim 2 refers to the fat present as discrete particles.

With respect to Claim 7, the Patent Office asserts that the word "type" renders the claim indefinite because it is unclear what the term "type" is intended to convey. See, Office Action, page 2, lines 12-15. In response, Applicants have amended Claim 7 to remove the term "type" and replace the phrase "cake of fondant type" with "fondant cake." This amendment does not add new matter. The amendment is supported in the Specification at, for example, page 1,

paragraph 2; pages 1-2, paragraph 11, lines 7-15; page 2, paragraphs 12-13; paragraph 17, lines 5-10; page 3, paragraph 30, lines 1-6; paragraph 32, lines 1-4; paragraph 33, lines 1-5. Applicants respectfully submit that currently amended Claim 7 is not indefinite.

Accordingly, Applicants respectfully request that the rejection of Claims 2 and 7 under 35 U.S.C. §112, second paragraph, be withdrawn.

In the Office Action, Claims 1-2, 4-5, 7 and 13-14 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Publication No. 2003/0003213 A1 to Drantch et al. ("*Drantch*"). In response, Applicants have amended Claims 1, 4 and 7. At least in view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that *Drantch* fails to disclose or suggest each and every element of independent Claims 1, 4 and 7 and Claims 2, 4-5 and 13-14 that depend therefrom.

Currently amended independent Claims 1 and 7 recite, in part, a mixture comprising flour, water and sugar, having an Aw of between 0.85 and 0.90, and at least one source of fat present in the form of discrete particles distributed in the mixture, wherein the mixture is in liquid form at a temperature of 8 °C. Similarly, currently amended independent Claim 4 recites, in part, a method for preparing a mixture comprising using a source of fat in the form of discrete particles distributed in a continuous phase of refrigerated fluid mixture comprising flour, water and sugar, to ensure a fluidity required for the mixture to flow at a refrigerated temperature during transfer from its packaging into a baking mold, wherein the mixture is in liquid form at a temperature of 8 °C. These amendments do not add new matter. The amendments are supported in the Specification, for example, at page 2, paragraphs 18 and 20-22; page 3, paragraph 31, lines 1-7.

Chocolate fondant cakes are characterized by their crisp pastry exterior and fluid, runny or fondant melted chocolate interior. See, Specification, page 1, paragraph 2, lines 1-14. Such cakes are laborious to prepare because they involve melting chocolate and fat, two mixing steps and the use of many kitchen accessories. See, Specification, page 1, paragraph 5. Conventional ready-to-cook mixtures have been developed to help reduce the preparation time of such cakes. See, Specification, page 1, paragraphs 6-9. However, conventional ready-to-cook mixtures transform into compact blocks which are very difficult or impossible to pour once they are refrigerated. See, Specification, page 1, paragraph 11, lines 1-7. Therefore, the present claims provide a mixture comprising at least one source of fat present in the form of discrete particles

distributed in the continuous phase of the mixture, wherein the mixture is in liquid form at a temperature of 8 °C. By providing the source of fat in the form of discrete particles dispersed in the mixture, the mixture is able to maintain a liquid form at a temperature of 8 °C, thus allowing the simple preparation of a fondant cake by pouring the refrigerated mixture into a mold and cooking in a standard oven. See, Specification, page 2, paragraphs 12-13. In contrast, *Drantch* fails to disclose every element of the present claims.

For example, *Drantch* fails to disclose or suggest a mixture which is in liquid form at a temperature of 8 °C as required, in part, by independent Claims 1, 4 and 7. The Patent Office asserts that *Drantch* discloses a dough or batter mixture which is fluid. See, Office Action, page 3, lines 3-4. However, the portion of *Drantch* relied on by the Patent Office merely discloses that a “batter” is generally thin enough to pour. See, *Drantch*, page 3, paragraph 31, lines 7-9. Although *Drantch* discloses that various “batters” are suitable for use in its invention, nowhere does *Drantch* disclose that its dough or batter is thin enough to pour at a temperature of 8 °C. See, *Drantch*, page 3, paragraph 40, lines 7-11. Instead, *Drantch* is entirely directed to a dough which is stored at ambient temperatures such as room temperature (25 °C) and higher, rather than refrigeration temperatures such as 8 °C. See, *Drantch*, page 2, paragraph 20, lines 1-6; page 3, paragraph 43. The dough of *Drantch* is specifically meant to address the problems of “chip bleeding” during storage at ambient temperatures as high as 85 °F (29.4 °C). See, *Drantch*, page 2, paragraph 20, lines 1-6. *Drantch* specifically states that the softening or melting of the chocolate chips is a problem “when the dough is not stored at refrigeration temperatures, but at ambient temperatures.” See, *Drantch*, page 1, paragraph 7.

*Drantch* is thus entirely directed to preventing excessive softening or melting of chocolate chips. See, *Drantch*, page 2, paragraph 20, lines 1-6. In direct contrast, the present claims are directed to a fondant cake with “a fluid, runny or fondant interior or core” of melted chocolate. See, Specification, page 1, paragraphs 2-4; page 2, paragraphs 12-13. By providing a mixture that remains in liquid form after refrigeration, the present claims provide a mixture which may be stored for several weeks at a refrigeration temperature and transformed into a fondant cake with a runny interior of chocolate merely by pouring the mixture into a mold and cooking. See, Specification, page 2, paragraphs 12-13. Nowhere does *Drantch* disclose that its dough or batter is thin enough to pour at a temperature of 8 °C, nor does the Patent Office cite

support for such claimed element. As such, *Drantch* fails to disclose a mixture which is in liquid form at a temperature of 8 °C in accordance with the present claims.

Moreover, with respect to Claims 1-3 and 7-12, *Drantch* fails to disclose a mixture having an Aw of between 0.85 and 0.90. The Patent Office asserts that *Drantch* discloses a mixture with a water activity Aw between 0.65 and 0.85. See, Office Action, page 3, lines 6-7. However, *Drantch* expressly states that “[t]he particular selection of ingredients and concentrations are selected to provide doughs having a water activity that is less than 0.85.” See, *Drantch*, page 5, paragraph 59, lines 1-3. Therefore, Applicants respectfully submit that *Drantch* fails to disclose or suggest a mixture having an Aw of between 0.85 and 0.90 as required, in part, by the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 1-2, 4-5, 7 and 13-14 under 35 U.S.C. §102(b) to *Drantch* be withdrawn.

In the Office Action, Claims 3, 6, 8-12 and 15-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Drantch*. As discussed previously, *Drantch* fails to disclose or suggest a mixture which is in liquid form at a temperature of 8 °C as required, in part, by independent Claims 1, 4 and 7 from which Claims 3, 6, 8-12 and 15-18 depend. With respect to Claims 3, 6, 9-12 and 15-18, the Patent Office asserts that obtaining the optimum amount of chocolate chips making up total fat content in the dough of *Drantch* would have been a matter of routine experimentation for one of ordinary skill in the art. See, Office Action, page 6, lines 3-18. Furthermore, with respect to Claim 8, the Patent Office asserts that using hydrogenated palm oil as the source of fat would have been obvious to one of ordinary skill in the art. See, Office Action, page 7, lines 1-7. However, even if the Patent Office’s assertions are true, *Drantch* still fails to suggest a mixture which is in liquid form at a temperature of 8 °C. Thus, Applicants respectfully submit that the Patent Office’s assertions regarding one of ordinary skill in the art fail to remedy the deficiencies of *Drantch* with respect to Claims 3, 6, 8-12 and 15-18.

Accordingly, Applicants respectfully request that the rejection of Claims 3, 6, 8-12 and 15-18 under 35 U.S.C. §103(a) to *Drantch* be withdrawn.

Applicants further note that Claims 19-24 have been newly added. The new Claims are fully supported in the Specification at, for example, page 2, paragraphs 20-22; page 3, paragraph 29, lines 4-15. No new matter has been added thereby. Applicants respectfully submit that the

subject matter as defined in the newly added claims is patentable over the cited art for at least substantially the same reasons as discussed above.

Furthermore, Applicants respectfully submit that *Drantch* fails to disclose a mixture comprising a source of fat present in the form of discrete particles, wherein a volume of the discrete particles is between  $0.01 \text{ mm}^3$  and  $80 \text{ mm}^3$  as required, in part, by Claims 19-21. *Drantch* is entirely directed to a chocolate chip cookie dough mixture in which the chocolate chips do not undergo excessive melting or softening of the chips during storage at ambient temperatures. See, *Drantch*, page 1, paragraphs 12-13; page 2, paragraph 20, lines 1-6. The Patent Office asserts that the chocolate chips of *Drantch* satisfy the claimed limitation of a “source of fat present in the form of discrete particles.” See, Office Action, page 3, lines 7-8. However, nowhere does *Drantch* disclose or suggest that its chocolate chip particles have a particle size within the claimed volume limitation. In fact, Applicants respectfully submit that one of ordinary skill in the art would understand that the particle size of chocolate chips in a chocolate chip cookie dough mixture, such as those disclosed in *Drantch*, is much too large to meet the volume limitation of Claims 19-21. For example, a typical chocolate chip is approximately 1 cm (10 mm) in diameter. See, Wikipedia, “Chocolate chip,” [http://en.wikipedia.org/wiki/Chocolate\\_chip](http://en.wikipedia.org/wiki/Chocolate_chip). The chocolate chips typically have a circular cross-section and a hemispherical shape such that the volume is approximately  $\frac{4}{3} \pi r^3$ , or  $\frac{4}{3} * (3.14159265) * (5 \text{ mm})^3 \sim 524 \text{ mm}^3$ . Even if the shape of the chocolate chip is such that the volume is slightly less than  $524 \text{ mm}^3$ , the volume is nearly an order of magnitude greater than the  $80 \text{ mm}^3$  upper limit of the claimed range. One of ordinary skill in the art would thus understand that the chocolate chip particles of *Drantch* do not satisfy the volume limitation of Claims 19-21. Therefore, Applicants respectfully submit that *Drantch* fails to disclose a mixture comprising a source of fat present in the form of discrete particles, wherein a volume of the discrete particles is between  $0.01 \text{ mm}^3$  and  $80 \text{ mm}^3$  in accordance with Claims 19-21.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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